No. 16-1011

In The
Supreme Court of the United States

WESTERNGECO LLC,

Petitioner,

v.

ION GEOPHYSICAL CORPORATION,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF FOR POWER INTEGRATIONS, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTERESTS OF AMICUS CURIAE

Amicus Power Integrations, Inc. ("Power Integrations") is an American company based in San Jose California, and a top innovator in the high-voltage power conversion market.[1] It has built a portfolio of patented products designed to make power converters smaller, simpler, more reliable, easier to design and manufacture, and more energy-efficient. To develop these products, Power Integrations spends significant time and money investing in the research and development of new power conversion technologies. It often sells its patented products to other companies that embed the technologies in end-user products like televisions, LED lights, and power supplies for cellular phones. Power Integrations relies on the U.S. patent system to protect its investment in the development of its intellectual property and fund the next wave of innovation.

Power Integrations has a profound interest in the outcome of petitioner's challenge to the Federal Circuit's decision, which is based in part on its categorical rule barring the consideration of lost foreign sales caused by domestic patent infringement when calculating damages under 35 U.S.C. § 284. Power Integrations was itself the petitioner in a similar case in which the Federal Circuit declined to reinstate a jury's $34 million damages award on the

[1] The parties have consented to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part, and no party, counsel for a party, or any other person except for amicus curiae made a monetary contribution intended to fund its preparation or submission.

basis of the same flawed reasoning it used in this case. *See Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 711 F.3d 1348, 1371-72 (Fed. Cir. 2013), *cert. denied*, 134 S. Ct. 900 (2014).

The Federal Circuit's holding in both of these cases will make it more difficult to deter patent infringement in the future and will increase the likelihood that unscrupulous copy-cats will be able to piggy-back off of Power Integrations' hard-earned intellectual property, rather than researching and innovating themselves. Precluding damages for foreign sales that are plainly connected to domestic infringement will reduce the incentive for companies to innovate and will only encourage further infringement. As Judge Wallach concisely explained in his post-remand dissent, "[a]n unduly rigid rule barring the district court from considering foreign lost profits even when those lost profits bear a sufficient relationship to domestic infringement improperly cabins [a court's] discretion, encourages market inefficiency, and threatens to deprive plaintiffs of deserved compensation in appropriate cases." Pet.App.22a.

SUMMARY OF THE ARGUMENT

As petitioner persuasively argues, the Federal Circuit erred in this case by holding that the presumption against extraterritoriality precludes a damages award for domestic infringement calculated by reference to foreign lost profits. Instead, traditional principles of proximate causation—including the doctrine of superseding causation—

serve to limit the damages available for patent infringement. Although petitioner focuses specifically on the Federal Circuit's errors with respect to damages and extraterritoriality in the context of 35 U.S.C. § 271(f), the court also erred by fundamentally misconstruing the doctrine of superseding causation—an error that has implications for all forms of patent infringement under § 271. It held that damages for lost foreign sales were categorically unavailable under § 284 because the "entirely extraterritorial . . . sale of an invention patented in the United States is an independent, intervening act that, under almost all circumstances, cuts off the chain of causation initiated by an act of domestic infringement." Pet.App.43a. That holding is at odds with long-standing principles of proximate causation.

First, the Federal Circuit's holding is inconsistent with this Court's precedents defining a later-in-time action as a superseding cause only where the later cause was (1) of independent origin from the earlier misconduct; and (2) not foreseeable. The Federal Circuit has long-recognized the importance of independence and foreseeability in the superseding cause analysis, and its holding in this case is a departure from its own precedent.

Second, the Federal Circuit's superseding cause holding creates a categorical bar on the recovery of lost foreign sales, which cannot be reconciled with this Court's decisions in *Goulds' Manufacturing Company v. Cowing* and *Dowagiac Manufacturing Company v. Minnesota Moline Plow*

Company. Both cases recognize that non-infringing foreign sales can be used to calculate lost profits where the patented product is manufactured in the United States.

Finally, the Federal Circuit's treatment of non-infringing foreign sales as a superseding cause is inconsistent with a long line of cases making clear that non-infringing conduct should often be considered when calculating damages and even when determining liability for domestic infringement.

This Court should reverse the judgment below and reject the Federal Circuit's categorical bar on the use of lost foreign sales to calculate damages for patent infringement.

ARGUMENT

THE FEDERAL CIRCUIT'S CATEGORICAL RULE BARRING DAMAGES BASED ON FOREIGN SALES UNDER § 284 IS INCONSISTENT WITH THIS COURT'S PRECEDENT AND BASIC PRINCIPLES OF SUPERSEDING CAUSATION

For well over a century, federal courts adjudicating patent disputes have understood that where liability for domestic infringement has been established, a patentee is entitled to recover as damages lost profits from foreign sales—as long as those foreign sales were a direct and foreseeable result of the domestic infringement. *See, e.g.*, *Goulds' Mfg. Co. v. Cowing*, 105 U.S. 253, 256 (1881)

(affirming damages award based on foreign sales of patented products manufactured in the United States); *R.R. Dynamics, Inc. v. A. Stucki Co.*, 727 F.2d 1506, 1519 (Fed. Cir. 1984).

But in two recent cases, the Federal Circuit jettisoned these long-standing principles in favor of a virtually categorical bar on the recovery of damages that arise abroad but are proximately caused by domestic infringement. First, in *Power Integrations, Inc. v. Fairchild Semiconductor International, Inc.*, the Federal Circuit refused to reinstate a damages award that was based, in part, on foreign sales of controller chips that were connected to certain acts of domestic infringement. 711 F.3d 1348, 1371-72 (Fed. Cir. 2013). The court stated: "Power Integrations is incorrect that, having established one or more acts of direct infringement in the United States, it may recover damages for Fairchild's worldwide sales of the patented invention because those foreign sales were the direct, foreseeable result of Fairchild's domestic infringement." *Id.* at 1371. Instead, "the entirely extraterritorial production, use, *or sale* of an invention patented in the United States is an *independent, intervening act* that, under almost all circumstances, *cuts off the chain of causation* initiated by an act of domestic infringement." *Id.* at 1371-72 (emphasis added).

In other words, the Federal Circuit was making the extraordinary claim that *any* foreign act of (1) production, (2) use, or (3) sale of the patented product is presumed to be a superseding cause that severs the causal link between the infringing conduct and the

patentee's injury. The court was unable to cite any authority directly supporting this claim, because there is none.

Just two years later, in this case, the Federal Circuit doubled down on its error, and reaffirmed its erroneous categorical bar on the recovery of damages for foreign sales. The court again rejected a damages award based, in part, on lost foreign profits proximately connected to domestic infringement. "Rather than grapple with this difficult question of proximity, the majority avoid[ed] it altogether." Pet.App.16a (Wallach, J., dissenting). Instead, it reiterated its misguided ruling in *Power Integrations*, based on the erroneous premise that because the U.S. patent laws do not bar foreign infringement, a U.S. patentholder can never recover damages "for a defendant's foreign exploitation of a patented invention," regardless of whether there is any connection between that (non-infringing) foreign exploitation and the domestic infringement. Pet.App.43a (quoting *Power Integrations*, 711 F.3d at 1371). The court expressly reaffirmed its unsupported superseding causation holding in *Power Integrations*: "[T]he entirely extraterritorial production, use, or sale of an invention patented in the United States is an independent, intervening act that, under almost all circumstances, cuts off the chain of causation initiated by an act of domestic infringement." *Id.* (quoting *Power Integrations*, 711 F.3d at 1371-72).

The Federal Circuit's misguided interpretation of the doctrine of superseding causation finds no

support in this Court's precedent. Indeed, the dissent expressed concern with the sweeping nature of the majority's holding, arguing that "[i]f the statement is read too broadly, . . . it conflicts with Supreme Court precedent holding that ordinary sales abroad can in some cases be used to measure damages resulting from domestic infringement." Pet.App.17a (Wallach, J., dissenting). Contrary to the majority's approach, foreign sales of a U.S.-patented product are a superseding cause that cuts off the chain of causation between the domestic infringement and the patentee's injury only where such foreign sales are wholly independent of the infringing conduct and entirely unforeseeable in view of the domestic infringement.

A. The Federal Circuit's Categorical Rule Barring Recovery of Damages for Foreign Sales is Inconsistent with this Court's Precedent on Superseding Causation

Patent infringement is a federal statutory tort. *Schillinger* v. *United States*, 155 U.S. 163, 169-70 (1894). Damages for patent infringement—just as for any other tort—are limited by traditional principles of proximate causation. *See, e.g.*, *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1390-91 (2014). One of those principles is the doctrine of superseding causation. "A superseding cause is an act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about." Restatement

(Second) of Torts § 440 (1965). Put another way, superseding causes are "intervening events" that "are sufficient to sever the causal nexus and cut off all liability." *Archer v. Warner*, 538 U.S. 314, 326 (2003) (Thomas, J., dissenting).

1. The Federal Circuit erroneously invoked the common-law doctrine of superseding causation when it held—as a matter of law—that the "entirely extraterritorial . . . sale of an invention patented in the United States is an independent, intervening act that, under almost all circumstances, cuts off the chain of causation initiated by an act of domestic infringement." Pet.App.43a. That holding is inconsistent with this Court's decisions limiting the applicability of superseding causation to cases where the later cause was (1) independent from the earlier misconduct; and (2) not foreseeable. *See Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 837-38 (1996); *Staub v. Proctor Hosp.*, 562 U.S. 411, 420 (2011).

In *Exxon*, defendants' negligence caused an oil tanker to break away from a mooring system that was holding it in place while it delivered oil to a pipeline. *Exxon*, 517 U.S. at 832-33. Hours after the crew regained control of the vessel and steered it out of danger, the captain's navigational negligence caused the tanker to run aground on a reef, resulting in total loss of the ship and its cargo. *Id.* at 833-34. The district court held that the captain's extraordinary negligence was the superseding and sole proximate cause of the tanker's grounding because the captain's actions were independent of the defendants' negligence and not foreseeable. *Id.* at 835. This Court

rejected Exxon's argument that the doctrine of superseding causation is inapplicable in admiralty proceedings and explained that it applies whenever "the defendant's negligence in fact substantially contributed to the plaintiff's injury, but the injury was actually brought about by a later cause of *independent origin that was not foreseeable*." *Id.* at 837 (quoting 1 T. Schoenbaum, Admiralty and Maritime Law § 5-3, pp. 165-66 (2d ed. 1994)) (emphasis added). The Court reaffirmed this holding in *Staub*. 562 U.S. at 420 ("A cause can be thought 'superseding' only if it is a 'cause of independent origin that was not foreseeable.'").

Indeed, prior to *Power Integrations*, the Federal Circuit's own jurisprudence on superseding causation has generally been consistent with *Exxon's* independence and foreseeability test. *See, e.g., Nycal Offshore Dev. Corp. v. United States*, 743 F.3d 837, 845 (Fed. Cir. 2014) (to prove superseding cause, defendant must show that plaintiff's injury was actually the result of "an *independent act by someone other than the defendant* that has the legal effect of negating the defendant's liability" (emphasis added)); *Lee by Lee v. United States*, 124 F.3d 1291, 1297 (Fed. Cir. 1997) (service member's criminal act of deliberately injuring infant child was superseding cause that cut off chain of causation from his wife's negligence because wife did not foresee that her husband would assault the child when she left child in his care). Other courts of appeals have also analyzed questions of superseding causation under *Exxon* and *Staub*. *See, e.g., Fisher v. Lufkin Indus., Inc.*, 847 F.3d 752, 759 (5th Cir. 2017) (citing *Staub*

and *Exxon* in support of holding that plaintiff's conduct was not superseding cause because it was "entirely foreseeable"); *McKenna v. City of Philadelphia*, 649 F.3d 171, 178 (3d Cir. 2011). The Restatement of Torts likewise emphasizes independence and foreseeability as critical factors to consider in evaluating a superseding causation question. *See* Restatement (Second) of Torts § 442(b) (1965) ("the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal . . ."); *id.* § 442(c) ("the fact that the intervening force is operating independently of any situation created by the actor's negligence . . .").

2. The Federal Circuit's holding in this case erroneously casts aside both of these requirements. It jettisons the "foreseeability" requirement by arbitrarily treating any foreign sale as a random and unexpected occurrence, with no connection to the underlying domestic infringement that gave rise to that foreign sale. Especially in today's global marketplace, there is no reason why an injury—including a lost sale—is any less foreseeable simply because it happens abroad. Specifically, like many of America's most innovative companies, Power Integrations designs and develops its products in the U.S. but then has them manufactured abroad for sale worldwide, including for incorporation into larger end-products manufactured abroad that are subsequently imported into and sold in the U.S. in large numbers. The Federal Circuit's indiscriminate line drawing will make it more difficult for U.S.

technology companies like Power Integrations to compete with foreign corporations around the world.

The Federal Circuit's assertion that extraterritorial sales are inherently "independent" of domestic patent infringement is equally arbitrary. That claim is based on a fundamental misconception of how markets—including global markets—work. There is no reason to assume that harm outside the United States is always independent of infringement inside the country. That is especially true when the clear purpose of the domestic infringement is to facilitate the foreign sales. Here, ION manufactured components of a competing survey system in the United States—including components that infringed WesternGeco's lateral steering patents. ION then sold those components abroad to surveying companies that competed directly with the surveying services provided by WesternGeco. Pet.App.40a; C.A.App.7000, 7006, 4474:4-8, 1312:3-1313:9, 1491:9-1492:18.[2] ION even stated that its purpose in developing the new survey system was "to compete in the market space that WesternGeco had created." C.A.App.8052, 7000, 7006. Far from being independent, the foreign sales that WesternGeco lost were a direct result of ION's infringing conduct in the United States. They were entirely foreseeable because the whole purpose of the infringing conduct was to capture part of WesternGeco's surveying business.

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[2] Citations to C.A.App. refer to the Federal Circuit appendix.

Judge Wallach's dissent in the Federal Circuit's post-remand *WesternGeco* opinion is instructive. He distinguishes between two extreme situations: (1) a situation where the volume of non-infringing sales is independent of the extent of the domestic infringement; and (2) a situation where there is a one-to one relationship between the non-infringing foreign sales and the domestic infringement. Pet.App.20a-21a. In the first situation, where there is no connection between the foreign sales and the extent of the domestic infringement, "those sales should not be used as a measure of damages flowing from the domestic infringement." *Id.* at 20a. But in the second situation, because each non-infringing unit or activity bears a direct one-to-one relationship with each infringing unit or activity, the non-infringing activities are "relevant to the damages calculation." *Id.* (citing *R.R. Dynamics, Inc*, 727 F.2d at 1519)).

Judge Wallach characterized the facts of this case as falling between those two extremes. *Id.* at 21a. ION sold components of its surveying system—including a component that infringed WesternGeco's lateral steering patent—to surveying companies for later combination abroad. "Because each streamer system contains some number of devices, the volume of infringing activity in the United States bears some relationship to the number of streamer systems used on the high seas, and the number of streamer systems in turn bears some relationship to the volume of lost sales." *Id.* (internal citations omitted). Because these lost foreign sales were at least partly dependent on ION's domestic infringement, they are not a

superseding cause that cuts off the chain of causation between the infringement and WesternGeco's injury.

B. The Federal Circuit's Categorical Rule Barring Recovery of Damages for Foreign Sales Also Contravenes *Goulds*, *Dowagiac*, and its Own Precedent

The Federal Circuit's blanket rule barring recovery of any damages arising from foreign sales, regardless of their link to domestic infringement, also cannot be reconciled with this Court's precedents on patent damages in particular. These cases further confirm that foreign sales are not necessarily a superseding cause and can properly be considered when calculating damages for domestic infringement. *See Goulds' Mfg. Co. v. Cowing*, 105 U.S. 253, 255-56 (1881); *Dowagiac Mfg. Co. v. Minn. Moline Plow Co.*, 235 U.S. 641, 650 (1915).

In *Goulds*, this Court reviewed a special master's report calculating damages owed for defendant's infringement of a patent for a pump used in the oil industry. 105 U.S. at 254. The defendant manufactured infringing pumps in the United States and sold them both domestically and in Canada. *Id.* at 256. The Court upheld an award of lost profits based, in part, on defendant's sale of the infringing pumps in Canada, and emphasized that these lost profits were dependent on the infringement and entirely foreseeable. *Id.* at 256, 258. Because the market for the pumps was "limited to a particular locality" and "limited in demand," a "single

manufacturer, possessing the facilities the appellant had, could easily, and with reasonable promptness, fill every order that was made." *Id.* at 256. If there had been no infringement, "[plaintiff] alone had the advantage of this market" and none of plaintiff's sales would have been affected. *Id.* There was thus a one-to-one correspondence between the non-infringing foreign sales and the domestic infringement. *Id.* ("[u]nder these circumstances it is easy to see that what has been the appellees' gain in this business must necessarily have been the appellant's loss"). Far from being an intervening act that cuts of the chain of causation, the "fruits of the advantage they gained by their infringement were, therefore, necessarily the profits they made on the entire sale." *Id.*

By contrast, where the infringing conduct was independent of the patentee's damages and not reasonably foreseeable, this Court has declined to award lost profits from sales abroad. In *Dowagiac*, the defendant sold the infringing product abroad but did not actually manufacture it in the United States. 235 U.S. at 650. This Court rejected a damages award that was based on defendant's Canadian sales because those sales were not tied to infringement inside the United States attributable to the defendant's conduct. *Id.* The implication of *Dowagiac* is that "had the defendants manufactured within the United States the infringing articles that were the subject of the foreign sales, those sales could have been used in the calculation of profits and therefore damages." Pet.App.58a. (Wallach, J., dissenting). But because the foreign sales were independent of the domestic infringement, they were a superseding

cause sufficient to sever the chain of causation connecting the defendant's actions to the patentee's injury.

Indeed, before *Power Integrations* and the decision under review, the Federal Circuit itself had applied *Goulds* and *Dowagiac* with this superseding causation framework in mind, holding that as long as foreign sales are lost as the direct and foreseeable result of infringing conduct under § 271, recovery of those profits is appropriate under § 284. *See, e.g., Schneider (Eur.) AG v. Scimed Life Sys., Inc.*, Nos. 94-1317, -1410, -1456, 1995 WL 375949, at *3 (Fed. Cir. Apr. 26, 1995) (relying on *Datascope* to affirm award of lost profits based on foreign sales); *Datascope Corp. v. SMEC, Inc.*, 879 F.2d 820, 826-27 (Fed. Cir. 1989) (acknowledging availability of damages based on foreign sales); *Amstar Corp. v. Envirotech Corp.*, 823 F.2d 1538, 1546 (Fed. Cir. 1987) (recognizing that damages for lost foreign sales are appropriate when infringing product was manufactured or assembled inside United States); *R.R. Dynamics, Inc*, 727 F.2d at 1519 (holding that "[w]hether [the patented products] were sold in the U.S. or elsewhere is therefore irrelevant" to the damages calculation).

C. Non-Infringement Often Can Be Relevant to the Calculation of Damages under § 284 and the Determination of Liability under § 271

Under the Federal Circuit's strained interpretation of superseding causation, *any*

extraterritorial production, use, or sale of an infringing product would automatically sever the causal chain between the domestic infringement and the patentee's injury—regardless of the strength of that connection—simply because the foreign conduct is not *itself* infringing. But even in the purely domestic context, non-infringing activities can be relevant both to damages and liability.

1. First, other types of non-infringing activities besides foreign sales of the patented product can be relevant to a damages calculation. For example, domestic sales of certain unpatented products can be used to calculate damages under § 284 where a patented device is used to manufacture the unpatented product. *See Minco, Inc. v. Combustion Eng'g, Inc.*, 95 F.3d 1109, 1118 (Fed. Cir. 1996). In *Minco*, the district court calculated lost profits based, in part, on the sale of non-infringing fused silica that was produced using a patented kiln. *Id.* at 1118-19. The Federal Circuit agreed with this approach, explaining that the "assessment of adequate damages under section 284 does not limit the patent holder to the amount of diverted sales of a commercial embodiment of the patented product. Rather, the patent holder may recover for an injury caused by the infringement if it 'was or should have been reasonably foreseeable by an infringing competitor in the relevant market, broadly defined.'" *Id.* at 1118 (quoting *Rite-Hite Corp. v. Kelley Co., Inc.*, 56 F.3d 1538, 1546 (Fed. Cir. 1995)). The court ultimately approved the damages award because the non-infringing fused silica sales were not a superseding cause. They were a "reasonably

foresee[able]" consequence of the infringement because the infringing product was used to manufacture the fused silica. *Id.*

Likewise, under the doctrine of convoyed sales, "a sale of a product that is not patented, but is sufficiently related to the patented product" may be used as a basis for calculating lost profits. *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, 778 F.3d 1365, 1375 (Fed. Cir. 2015). Entitlement to lost profits for such convoyed sales depends on a superseding causation analysis—the non-infringing products "must be functionally related to the patented product and losses must be reasonably foreseeable." *Id.* Finally, and most relevant to this case, when a patented product is used as an individual component within a larger multi-component product, a patentee may recover "damages based on the entire market value of the [multi-component product]" so long as "the patented feature creates the basis for customer demand or substantially creates the value of the component parts." *VirnetX, Inc. v. Cisco Sys., Inc.*, 767 F.3d 1308, 1326 (Fed. Cir. 2014) (quoting *Versata Software, Inc., v. SAP Am., Inc.*, 717 F.3d 1255, 1268 (Fed. Cir. 2013) (internal quotation marks omitted).

These cases confirm that basic superseding causation principles are relevant to determining the impact of domestic non-infringing conduct on the calculation of damages under § 284. The fact that the non-infringing conduct occurred abroad in this case should not change the need for a fact-bound, particularized proximate cause analysis.

2. Second, certain non-infringing foreign conduct can be relevant to the determination of *liability* under § 271, notwithstanding the basic requirement that the infringing conduct occur in the United States. For example, offers to sell a patented product can be infringing even if all the negotiations occur abroad, as long as the contemplated sale is to take place within the United States. *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Contractors USA, Inc.*, 617 F.3d 1296, 1309-10 (Fed. Cir. 2010). The patent at issue in *Transocean* was a new apparatus for conducting offshore drilling. *Id.* at 1300-01. Defendant allegedly made an offer in Norway to sell an infringing drilling rig to another company. *Id.* at 1308. The drilling rig was to be delivered and used within the United States. *Id.* at 1309. Despite statutory language describing "offers to sell . . . any patented invention, *within the United States*" as infringing conduct, 35 U.S.C. § 271(a) (emphasis added), the court held that offers made *abroad* to sell a patented invention within the United States constitute infringement. *Id.* at 1309-10. The court focused on the fact that the offer was to make a sale within the United States. The precise location of the offer was irrelevant. *Id.*

This principle extends to other foreign acts that result in domestic infringement. For example, "where a foreign party, with the requisite knowledge and intent, employs extraterritorial means to actively induce acts of direct infringement that occur within the United States, such conduct is not categorically exempt from redress under § 271(b)." *Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1302-03 (Fed. Cir. 2012).

Similarly, the fact that part of a patented system is outside of the United States does not cut off liability under § 271(a) as long as "the place where control of the system is exercised and beneficial use of the system obtained" is within the United States. *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1317 (Fed. Cir. 2005).

The clear import of these cases is that the impact of certain types of non-infringing conduct, whether occurring domestically or overseas, can be relevant when evaluating both liability and damages for patent infringement. Far from being an "independent, intervening act that . . . cuts off the chain of causation initiated by an act of domestic infringement," Pet.App.43a, non-infringing conduct—including lost foreign sales—is often highly relevant when analyzing patent infringement questions.

* * * * *

As the petitioner persuasively argues, basic principles of proximate causation are the appropriate way to limit damages for patent infringement under § 284—not the presumption against extraterritoriality. But the Federal Circuit has ignored those principles by applying what is effectively a presumption in favor of superseding causation: "[T]he entirely extraterritorial . . . sale of an invention patented in the United States is an independent, intervening act that, under almost all circumstances, cuts off the chain of causation initiated by an act of domestic infringement." That holding, which creates a categorical bar on the

recovery of damages for lost foreign sales, is inconsistent with this Court's precedent, basic proximate cause principles, and the fact that other non-infringing conduct has long been found to be relevant in certain circumstances to calculating damages and even to determining whether there is liability for patent infringement in the United States. This provides another reason why this Court should reverse the Federal Circuit's erroneous *WesternGeco* decision.

CONCLUSION

The judgment of the Court of Appeals for the Federal Circuit should be reversed.

Respectfully submitted,

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